

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

DIRECT SUPPLY, INC.,
a Wisconsin corporation
6767 N. Industrial Road
Milwaukee, WI 53223,

Case No.: 18-cv-1829

v. Plaintiff,

Case Code: 190 (Other Contract)

HEALTH SERVICES MANAGEMENT GROUP, LLC,
a Tennessee limited liability company
485 Central Ave. NE
Cleveland, TN 37311,

Defendant.

COMPLAINT

As its complaint against the defendant, Health Services Management Group, LLC, plaintiff, Direct Supply, Inc., alleges as follows:

Parties

1. Plaintiff, Direct Supply, Inc., (“DSI”) is a Wisconsin corporation with its principal place of business at 6767 N. Industrial Road, Milwaukee, Wisconsin 53223. DSI is a provider of goods, equipment and interior design services for senior living communities.
2. Defendant, Health Services Management Group, LLC (“HSMG”) is a Tennessee limited liability company with its principal place of business at 485 Central Ave. NE, Cleveland, Tennessee 37311. HSMG operates senior living, health and rehabilitation facilities in various states, including Tennessee, North Carolina, Virginia and Wisconsin. HSMG has the following

two members: Thomas D. Johnson and Kenneth C. Hart. Mr. Johnson and Mr. Hart are both citizens of Tennessee.

Jurisdiction and Venue

3. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a)(1). The amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and complete diversity of citizenship exists between DSI and HSMG.

4. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims herein occurred in this District.

Claims for Relief

Count 1: Breach of Contract

5. On or about March 31, 2015, DSI and HSMG entered into a credit agreement (the “Agreement”) whereby DSI agreed to provide goods and services to HSMG pursuant to certain terms and conditions of sale. A true copy of the Agreement is attached hereto as **Exhibit 1**.

6. From April 2015 to January 2018, DSI provided goods and services to HSMG under the Agreement.

7. HSMG accepted the goods and services provided by DSI.

8. DSI billed HSMG by invoice for the goods and services provided. The most recent invoice was delivered to HSMG on or about January 31, 2018. Payment of the final invoice was due in full on or before March 2, 2018.

9. Although HSMG made certain payments to DSI for the goods and services it accepted, HSMG materially breached the Agreement by failing to pay in full the price for the goods and services as it became due.

10. There remains due and owing \$110,434.79 from HSMG to DSI for the goods and services provided under the Agreement. A true copy of an account statement DSI furnished to a HSMG on or about May 31, 2018, reflecting the principal balance due and owing is attached hereto as **Exhibit 2**.

11. DSI has demanded payment for the goods and services provided to, and accepted by, HSMG under the Agreement, but HSMG has made no payment to DSI towards the \$110,434.79 contract price that remains due and owing.

12. HSMG is liable to DSI for the \$110,434.79 contract price of the goods and services provided, plus pre-judgment interest at a rate of 1% per month since March 2, 2018 as provided by the Agreement (totaling \$8,834.80 as of November 2, 2018), plus collection costs and attorney's fees as provided by the Agreement in an amount to be determined.

13. DSI has complied with all conditions precedent to its right to recovery hereunder.

Count 2: Account Stated

14. DSI repeats and realleges the allegations in paragraphs 1 through 13 of this complaint as if fully set forth herein.

15. Between April 2015 to January 2018, DSI provided goods and services to HSMG.

16. On or about May 31, 2018, DSI delivered an account statement to HSMG reflecting the \$110,434.79 balance due and owing on its account with DSI stemming from the sales of goods and services. A true copy of the account statement is attached hereto as **Exhibit 2**.

17. HSMG accepted and retained the account statement without objection, which constitutes an account stated.

18. HSMG failed to make any payments to DSI towards the stated account.

19. As a direct result of HSMG's failure to pay the account stated, DSI has sustained damages in the amount of the \$110,434.79, plus contractual interest, collection costs and attorney's fees under the Agreement as set forth in paragraph 12 above.

20. DSI has complied with all conditions precedent to its right to recovery hereunder.

WHEREFORE, DSI demands judgment in its favor and against HSMG as follows:

- a. Damages in the amount of \$110,434.79;
- b. Pre-judgment interest as provided by the Agreement at a rate 1% per month from March 2, 2018;
- c. Attorney's fees as provided by the Agreement in an amount to be determined;
- d. Costs and disbursements as allowed by law and the Agreement; and
- e. Such other and further relief as this Court deems proper.

Dated this 20th day of November 2018.

By: *s/Zach S. Whitney*
Zach S. Whitney
WI State Bar # 1046655
KOHNER, MANN & KAILAS, S.C.
Washington Building
Barnabas Business Center
4650 N. Port Washington Rd.
Milwaukee, WI 53212-1059
Telephone: (414) 962-5110
Facsimile: (414) 962-8725
zwhitney@kmksc.com
Attorneys for Plaintiff Direct Supply, Inc.